

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2633 - SB 2777**

February 16, 2022

**SUMMARY OF BILL:** Declares that a teacher or other employee of a public school or local education agency (LEA) is not required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's biological sex. Declares that a teacher or employee is not civilly liable and cannot be subject to adverse employment action for not using a student's preferred pronoun that is inconsistent with the student's biological sex.

**FISCAL IMPACT:**

**Other Fiscal Impact – If found in violation of federal law, this legislation could jeopardize federal funding in FY22-23 and subsequent years.**

Assumptions:

- Title IX of the Education Amendments Act of 1972 (Title IX) prohibits recipients of federal financial assistance from discriminating based on sexual orientation and gender identity in their education programs and activities.
- On February 22, 2017 the U.S Department of Justice and Education rescinded an issued joint letter “Dear Colleague Letter” with prior guidance under Title IX that stated a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex.
- On June 16, 2021, the U.S. Department of Education did not address the rescinded letter in regard to using pronouns, but did issue a “Notice of Interpretation” letter to make clear that the Department interprets Title IX’s prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity, which includes individuals being treated differently because of their sexual orientation or gender identity.
- In June, 2021 the U.S. Department of Education issued a fact sheet entitled “Supporting Transgender Youth in School”, which highlights schools “adopting policies that respect all students’ gender identities—such as the use of the name a student goes by, which may be different from their legal name, and pronouns that reflect a student’s gender identity—and implementing policies to safeguard students’ privacy—such as maintaining the confidentiality of a student’s birth name or sex assigned at birth if the student wishes to keep this information private, unless the disclosure is legally required.”

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- Based on information provided by the Department of Education (DOE) this legislation could limit the TN Department of Education Office for Civil Rights ability to develop corrective action plans that compel schools to require their staff to use students' preferred pronouns.
- According to DOE, the requirements of this legislation could be in violation of Title IX and U.S. Department of Education policies and could jeopardize annual federal funding. The FY21-22 federal awards totaled \$5,385,248,493.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/lm